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Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1985

STATE OF MARYLAND,

Petitioner,

v.

HAROLD GARRISON,

Respondent

On Petition For A Writ of Certiorari To The Court of Special Appeals of Maryland

RESPONDENT'S BRIEF IN OPPOSITION TO THE GRANTING OF WRIT OF CERTIORARI

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STATEMENT OF FACTS

The Respondent accepts and incorporates by reference the Petitioner's Statement of the Case as the relevant facts in this case.

QUESTIONS PRESENTED FOR REVIEW

Whether a Search Warrant particularly describing one apartment authorizes the warrantless search and seizure from an adjacent apartment not described in the Search Warrant.

ARGUMENT

A Search Warrant which particularly describes one apartment does not authorize the search and seizure from an adjacent apartment not described in the Search Warrant.

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It is uncontested that the search of the Respondent's apartment was conducted without a search warrant. The police had obtained a warrant to search the person and premises of McWebb. No probable cause had been presented in the affidavit for the search warrant to search either the person or the premises of the Respondent.

As this Court has noted, "the entry into a home to conduct a search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant." Steagald v. United States, 451 U.S. 204, 211, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981)(emphasis added). "Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically delineated exceptions." Coolidge v. New Hampshire, 403 U.S. 443, 454-455, 91S.Ct. 2022, 29 L.Ed.2d 564 (1971). Therefore, the warrantless search of the Respondent's apartment may not be sustained unless it falls within one of the recognized exceptions to the warrant requirement.

The Petitioner has not argued that any exception to the warrant requirement applies in the instant case. Instead, the Petitioner would have this Court carve a new exception to the warrant requirement permitting officers to conduct warrantless searches whenever they have a reasonable, but mistaken belief, they are searching an area authorized by a search warrant. In support of this novel exception to the warrant requirement, the Petitioner has correctly noted certain general search and seizure principles, but also has misunderstood and/or misapplied the holdings of this Court and other Courts when applying these principles. A dissection of Petitioner's arguments is necessary to demonstrate Petitioner's misplaced reliance on the cases cited by the Petitioner as authority for this novel, and unsupported, exception to the warrant requirement.

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The Petitioner recognizes and accepts that the Fourth Amendment requires that all warrants shall "particularly describ[e] the place to be searched," and that a sufficient description of the place to be searched occurs when an officer "can, with reasonable effort, ascertain and identify the place to be searched." Steele v. United States, 267 U.S. 498, 503, 45 S.Ct. 414, 416, 69 L.Ed. 757 (1925). Having recognized the particularity requirement of the Fourth Amendment, the Petitioner would have us ignore it by allowing searches of areas not authorized to be searched by a warrant.

Reviewing courts have upheld searches when the descriptions of the place to be searched were inaccurate when the police ultimately arrive at the proper area to be searched. What the Petitioner ignores is that the validity of the warrant itself was under attack in these cases - that the warrant failed because of the lack of a sufficient description. But in all cases the warrant covered the premises searched. None of the cases support the Petitioner's argument that the warrants authorized the search of and seizure from areas not described in the warrant. [1]

Thus, when a warrant describes a particular place to be searched, the reviewing courts have not invalidated a search merely because inaccuracies in the description of the place to be searched caused both the "wrong", an area not described, and the "right", the area described, to be searched. In the instant case, the supporting affidavit for the warrant presented to the issuing magistrate sufficient probable cause to issue a warrant

1 See, Annotation: Search Warrant: Sufficiency of Description of Apartment or Room to be Searched in Multiple-Occupancy Structure 11 A.L.R. 3d 1330 and cases cited therein.

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to search the premises and person of McWebb. There was no prior judicial approval of the search of the Respondent's apartment. The police had authority to search McWebb's apartment; they had no authority to search the Respondent's apartment. The Court of Appeals of Maryland did not err, as Petitioner contends, when it held that the police improperly expanded the scope of the search warrant for McWebb's apartment by searching Respondent's apartment. Authority dictates otherwise.

The Petitioner contends that Hill v. California, 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971), supports his theory that the reasonableness of an officer's mistake may be considered in upholding a warrantless search. Petitioner's reliance is misplaced. In Hill the police had neither an arrest or a search warrant when they went to Hill's apartment to arrest him. The police went to Hill's apartment and arrested the man who answered the door, Miller. The police then, without a warrant, searched Hill's apartment. During the search the police seized, among other items, a diary written by Hill which was offered as evidence against him. This Court upheld the search of Hill's apartment because, under the law at the time of the search, the search of the apartment was permissable as a search incident to arrest. The police had probable cause to arrest Hill and therefore "the police were entitled to do what the law at that time allowed them to do if Miller had in fact been Hill, that is to search incident to arrest and to seize evidence of the crime the police had probable cause to believe Hill had committed." 401 U.S. at 804.

Hill, supra, has limited, if any, application because of this Court's rulings in Chimel v. California 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969) and Payton v. New York, 445 U.S. 573, 100S.Ct. 1371, 63 L.Ed.2d 639 (1980). The search incident to arrest permitted in Hill would not pass the narrowed

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permissable scope of searches as announced in Chimel. Chimel would not allow the police to search Hill's entire apartment without a warrant.

Neither would the arrest of Miller in Hill's apartment without a warrant be permitted because of this Court's ruling in Payton, supra. "[T]he physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed." 445 U.S. at 585-586. (Citing United States v. United States District Court, 407 U.S. 297, 313, 92 S.Ct. 2125, 32 L. Ed2d 752). Only by requiring that the warrant procedure be followed before arresting an individual in him home can the public be protected from unreasonable intrusions.

As discussed, supra, the Petitioner has argued for the condoning of a warrantless search by presenting decisions in which reviewing courts have upheld search warrants under attack for failing to particularly describe the place to be searched when evidence sought to be suppressed came from the area directed to be searched by the warrant. That the Petitioner is really seeking is not for this Court to condone the warrant per se, but to condone a search conducted outside the area described by the warrant. Ignoring that the warrant specified that the area to be searched was the third floor apartment of McWebb, the Petitioner seeks to expand the scope of the search to an area not specified - Respondent's apartment. The warrant was specific. The warrant limited the area to be searched to McWebb's apartment.

This Court said in Walter v. United States, 447 U.S. 649, 656, 100 S.Ct. 2395, 65 L.Ed2d 410 (1980) that

> "[w]hen an official search is properly authorized - whether by consent or by the issuance of a valid warrant - the scope of the search is limited by the terms of its authorization. Consent to search a garage would not implicitly authorize a search of an adjoining house; a warrant to search for a stolen refrigerator would not authorize the opening of desk drawers." (emphasis added).

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Thus the warrant authorizing the search of McWebb's apartment limited the area to be searched; it did not allow the search of the Respondent's apartment. Each individual in his own home, be it a shack or a castle, has a reasonable expectation of privacy. In the United States today, millions of persons live in buildings with multiple living quarters. Each is entitled to his own privacy. A warrant to search one subunit within a single building does not authorize the search of another subunit. See Flowers v. State, 88 Okla. Crim. 252, 202 P.2d 233 (1949) (warrant authorizing search of specific room in hotel cannot be used to search another separately occupied room). The Court of Appeals of Maryland correctly observed that a warrant to search one subunit does not permit the search of another subunit. Their decision did not invalidate searches of a subunit when the police erroneously enter a wrong premise before locating the proper premise; it only invalidated searches of premises not specified in the warrant. If the Court of Appeals erred in any fashion, it was only in not dictating that police, when they are aware of the multiple occupancy of a structure, have a duty to ascertain with more certainty the location within a building of a particular person's residence. If they had done so in this case, only McWebb's apartment would have been searched because they would have known which apartment was his. The police in the instant case made no attempt to ascertain the exact apartment of McWebb. It is true that they contacted the Baltimore Gas & Electric Company in an attempt to verify that McWebb had a third floor apartment. But they made the inquiry not to ascertain the exact apartment belonging to McWebb, thus preventing unwarranted intrusions into the apartments of others, but only to verify the information from an informant that McWebb lived on the third floor. As more and more old single family homes are turned into multi-residence dwellings, as well as the number of apartment dwellings are built, the need for the police to ascertain the

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exact location of a particular person's apartment becomes increasingly important to avoid the unwarranted intrusions into the homes of persons not subject to police investigation, thus upholding and protecting our valuable Fourth Amendment right to be free from unreasonable searches.

CONCLUSION

The Fourth Amendment protects our basic right to be free from unreasonable searches and seizures and further requires that all warrants be particular and supported by probable cause. The Court of Appeals of Maryland upheld the Fourth Amendment by ruling that the search of the Respondent's apartment was unreasonable because the warrant did not authorize the search of his apartment. There was no probable cause presented to a neutral and detached magistrate requesting authority to search the Respondent's apartment. There was no warrant authorizing the search of the Respondent and his apartment. The Petitioner seeks to have this Court ignore the Fourth Amendment's requirements by allowing searches of premises not authorized by a warrant. The Court of Appeals of Maryland refused to ignore the dictates of the Fourth Amendment as requested by the Petitioner. It upheld that searches without a warrant are presumptively unreasonable. The Petitioner has not presented any sound justification for creating a new exception to the warrant requirement. Therefore, it respectfully is submitted that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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Clerk,
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Supreme Court Building
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Washington, D.C. 20543

RE: State of Maryland v. Harold Garrison
October Term, 1985
Waiver, Motion to Proceed on Appeal
In Forma Pauperis
Affidavit in Support of Motion to
Proceed on Appeal In Forma Pauperis

Dear Sir/Madam:

Please find enclosed the above captioned pleadings which I would appreciate your filing on behalf of the Defendant, Harold Garrison.

Very truly yours,

Gerald A. Kroop

Gerald A. Kroop

GAK/cs
Enclosures
cc: Stephen H. Sachs,
Deborah K. Chasanow,
Attorney General's Office